



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Conner Brothers Construction Co., Inc.--

Reconsideration

File: B-228232.3

Date: April 26, 1988

DIGEST

Request for reconsideration is denied where protester essentially reiterates arguments initially raised and disagrees with original decision and therefore fails to show any error of fact or law that would warrant reversal or modification.

DECISION

Conner Brothers Construction Co., Inc., requests reconsideration of our decision in Conner Brothers Construction Co., Inc., B-228232.2, Feb. 3, 1988, 88-1 CPD ¶ 103. In that decision, we denied Conner's protest against the Army Corps of Engineers' refusal to permit Conner to correct a mistake in the bid it submitted in response to invitation for bids No. DACA21-87-B-0111 for the construction of a centralized vehicle wash facility at Fort Benning, Georgia.

We deny the request for reconsideration.

Conner had planned to use a subcontractor for roller compacted concrete (RCC) work required under the contract, and had relied on subcontractor quotes from Ernst Paving Incorporated in preparing those portions of its bid. After bid opening, but before the contract was awarded, it was discovered that Ernst had omitted certain costs from its quotes by mistake. Conner requested correction of the mistake in its own bid based on the subcontractor's error. Conner did not seek to adjust its bid by the amount of Ernst's actual error, but sought to substitute the next lowest subcontractor quote it received for the RCC work. The Corps denied Conner's request. The parties agreed that Conner could accept the award at its uncorrected price but still present its claim for bid correction to our Office for resolution.

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We found that it was reasonable for the Corps to have concluded that Conner had not demonstrated its intended bid by sufficiently clear and convincing evidence to permit correction, and denied the protest. Our decision was based primarily on the combination of two factors. First, the requested correction would require the recalculation of the bid, based on a different subcontractor's price, and involved calculations and adjustments that were not entirely clear from the workpapers submitted. Second, the requested correction would have brought Conner's total bid price to within less than 1 percent of the next low bid, a situation in which there can be almost no uncertainty in proving the amount of the intended bid. We found that the uncertainty involved in determining which subcontractor Conner "would have used," and at what price, prevented Conner from meeting the requirement of "clear and convincing evidence" dictated by the close proximity in bid prices.

At the outset, we note that to obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either errors of fact or of law or information not previously considered that warrant its reversal or modification. See 4 C.F.R. § 21.12(a) (1988); Roy F. Weston, Inc.--Reconsideration, B-221863.3, Sept. 29, 1986, 86-2 CPD ¶ 364. Repetition of arguments made during resolution of the original protest or mere disagreement with our decision do not meet this standard. Id.

Our decision cites Roebbelen Engineering, Inc., B-219929, Dec. 20, 1985, 85-2 CPD ¶ 691, aff'd, Roebbelen Engineering, Inc.--Reconsideration, B-219929.2, Mar. 31, 1986, 86-1 CPD ¶ 301, for the principle that a bidder generally may not obtain correction for even a clearly mistaken bid based on computations or recomputations performed after bid opening to reflect a price that the bidder never intended before bid opening. Conner argues on reconsideration that this principle is inapplicable here, because its "intended" bid allegedly is clearly shown in its worksheets and therefore requires no recalculation.

Conner is essentially reiterating its original protest arguments. When Conner originally argued that "its workpapers and affidavits provide objective proof of its intended bid," we disagreed. We found that the substitution of the next low subcontractor's price would "reflect a price that was never intended to be included in the bid Conner originally submitted." Furthermore, we specifically found that a number of discrepancies existed in the record in connection with Conner's intended bid. Conner's disagreement with these conclusions and insistence that its original

arguments are correct do not provide any basis for reconsidering our decision.

Conner also argues that the proximity between its revised bid and the next low bid should not have precluded correction. Citing a number of our past decisions, the protester contends that our Office has never held that correction must be denied solely because the difference between the corrected bid and the next lowest bidder is 1 percent.

Conner has misconstrued our decision on this point. We did not indicate that the fact that the requested correction would bring Conners' bid to less than 1 percent below the next low bid, by itself, would preclude correction. Rather, we stated that:

"The sufficiency of the evidence to establish the intended bid depends on the extent of the range of uncertainty and the closeness of the corrected bid to the next low bid. The closer the top of the range of uncertainty is to the next low bid, the more difficult it is to establish an intended bid. When the requested correction would bring the low bid within 1 percent of the next low bid, there can be almost no uncertainty in proving the amount of the intended bid." (citations omitted).

The basis for our denial of Conner's protest was that Conner had not presented sufficiently clear and convincing evidence of its intended bid to meet the extremely high standard of proof required by the closeness of the bid amounts. We viewed the request to correct, as does Conner's, as one of burden of proof on the part of the claimant. Conner's argument on reconsideration, that correction may be permitted in situations involving such close bids when the evidence is sufficient, does not alter our conclusion that the evidence presented here was insufficient to meet the standard. We therefore will not consider this argument further.

The request for reconsideration is denied.

for *Seymour E. Hinchman*
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General Counsel